

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AMERICAN UNIVERSITY OF ANTIGUA COLLEGE
OF MEDICINE, a foreign corporation,

Plaintiff,

United States District Court Judge
Patrick J. Duggan, presiding
Michael Hluchaniuk, referral
Case No.: 2:10-cv-10978

V

STEVEN L. WOODWARD,

Defendant.

Eric A. Buikema (P58379) CARDELLI, LANFEAR & BUIKEMA, P.C. Attorneys for Plaintiff 322 W. Lincoln Royal Oak, MI 48067 (248) 544-1100 ebuikema@cardellilaw.com	STEVEN L. WOODWARD In Pro Per c/o 7211 Brittwood Lane Flint, MI 48507 Steve_L_woodward@yahoo.com
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MEMORANDUM OF RESOLVED AND UNRESOLVED ISSUES
Plaintiff's Motion to Compel Deposition (Docket No. 47)

Plaintiff American University of Antigua College of Medicine ("AUA"), through counsel states the following Memorandum of Resolved and Unresolved Issues pursuant to the Court's scheduling order requiring the same (Docket No. 64):

1. The movant (AUA) conferred in good faith with Defendant after the filing of the motion in an effort to narrow the areas of disagreement. Exhibit 1.

2. The issue that remains in dispute is whether Defendant should be compelled to appear for deposition. The deposition notice at issue is attached to Plaintiff's Motion as Exhibit 1. (Docket No. 47).

3. Despite the Court's order, Defendant refused to participate in this joint submission. Exhibit 2.

4. Plaintiff seeks an order of costs and sanctions for Defendant's willful disobedience of the Court's order.

PLAINTIFF'S POSITION

Defendant should be compelled to appear for deposition. Defendant's testimony is within the scope of discovery and is relevant and not privileged. Fed. R. Civ. P. 26(b)(1). A party does not need leave of the Court to conduct depositions of parties. Fed. R. Civ. P. 30(a)(1).

On October 19, 2010 Plaintiff noticed Defendant's deposition for November 4, 2010. Plaintiff sought to make reasonable accommodations around Defendant's schedule, but Defendant failed to appear and otherwise failed to make himself available for deposition. (See Docket No. 47, Exhibits 2, 3, and 4.) Following the filing of the instant motion, Plaintiff again offered Defendant the opportunity to appear for deposition. This request was denied. (See Reply Brief Exhibit 1). Defendant asserts no legal or factual grounds sufficient to excuse him from being deposed. As such, Plaintiff requests that the Court compel his deposition.

Plaintiff further contends that it is entitled to costs and sanctions as Defendant failed to appear for a duly noticed deposition. Fed. R. Civ. P. 37(d)(1)(A). Defendant will contend that he sought a protective order and this excuses his failure to attend. However, this Motion for Protective Order (Docket No. 60) was not filed until November 19, 2010, over two weeks after

he failed to appear for deposition and over a month after the deposition was initially noticed¹. Moreover, this is Defendant's second motion for protective order governing the same subject. His first motion was already denied by the Court. As such, Plaintiff is entitled to an order of costs and sanctions for having to bring and appear at this motion.

AUTHORITY SUPPORTING PLAINTIFF'S POSITION

Authority:

Proposition:

Fed. R. Civ. P. 26(b)(1)

Scope of discovery

Fed. R. Civ. P. 30(a)(1)

Depositions of Parties do not need leave of the Court

Fed. R. Civ. P. 37(d)(1)(A)

Sanctions/costs for failure to appear

DEFENDANT'S POSITION

[Defendant refused to participate in this submission. Exhibit 2.]

¹ Defendant did file earlier motions for protective orders (Docket Nos. 43 and 53). These motions were denied by the court (Docket Nos. 44 and 54). Neither was pending on November 4, 2010 when Defendant failed to appear for deposition.

AUTHORITY SUPPORTING PLAINTIFF'S POSITION

Authority:

Proposition:

[Defendant refused to participate in this submission. Exhibit 2.]

/s/ Eric A. Buikema (P58379)
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Dated: December 20, 2010

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Memorandum of Resolved and Unresolved Issued – Plaintiff's Motion to Compel Deposition (Docket No. 47) and this Certificate of Service were served upon Steven L. Woodward, Defendant, via his email address Steve_L_woodward@yahoo.com and First Class U.S. mail to Steven Woodward, c/o 7211 Brittwood Lane, Flint, MI 48507 on December 14, 2010.

/s/ Eric A. Buikema
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